

**ENVIRONMENTAL PROTECTION EASEMENT
AND
DECLARATION OF RESTRICTIVE COVENANTS**

1. This Environmental Protection Easement and Declaration of Restrictive Covenants is made this ____ day of _____, 200__, by and between _____, ("Grantor") and the Utah Department of Environmental Quality, ("Grantee").

WITNESSETH:

2. **WHEREAS**, Grantor is the owner of a parcel of land located in the county of Juab, State of Utah, more particularly described on Exhibit A attached hereto and made a part hereof (the "Property");

3. **WHEREAS**, the Property is part of the Eureka Mills Superfund Site ("Site"), which the U.S. Environmental Protection Agency ("EPA"), pursuant to Section 105 of the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA"), 42 U.S.C. § 9605, placed on the National Priorities List, set forth at 40 C.F.R. Part 300, Appendix B, by publication in the Federal Register on September 5, 2002;

4. **WHEREAS**, in a Record of Decision for Lead Contaminated Soils in Operable Units 00, 01, 02 and 03 of the Eureka Mills Superfund Site dated September, 2002, and in a Record of Decision for Early Interim Action dated September, 2002 (the "RODs"), the EPA Region 8 Regional Administrator selected "Remedial Actions" for the Site, which provide, in part, for the following actions:

Response Action Structures, which shall mean such man made terrain features or contours or structures which are identified in the Remedial Action Work Plan, to be constructed or erected by EPA or its Designees on Grantor's Property, to implement the Response Actions. Such features or structures may include, but are not limited to, access control features, boulders, fencing, gates, roadways, retaining walls, drainages, sedimentation basins and capped mine waste piles;

5. **WHEREAS**, Grantor has voluntarily agreed to subject the Property to this Environmental Protection Easement for the purpose of protecting human health and the environment;

6. **WHEREAS**, EPA is a third-party beneficiary of this agreement;

7. **WHEREAS**, the Grantor and Grantee (hereafter, the "Parties") hereto have agreed to grant a permanent right of access over the Property to the Grantee for purposes of

facilitating the EPA Remedial Actions, to grant EPA and its designees access to and use of the Property for purposes of implementing and monitoring the remedial actions, and to impose on the Property use restrictions as covenants that will run with the land; and

7. **WHEREAS**, Grantor wishes to cooperate fully with the Grantee and EPA in the implementation of all response actions at the Site;

NOW, THEREFORE:

8. **Grant:** Grantor, on behalf of itself, its successors and assigns, in consideration of the terms of the Consent Decree in the case of *United States v. Chief Consolidated Mining Company, (D. Utah)*, does hereby covenant and declare that the Property shall be subject to the restrictions on use set forth below, and does give, grant and convey to the Grantee, and its assigns, with general warranties of title, the perpetual right to enforce said use restrictions, and an environmental protection easement of the nature and character, and for the purposes hereinafter set forth, with respect to the Property.

9. **Purpose:** It is the purpose of this instrument to convey to the Grantee real property rights, which will run with the land, to facilitate the remediation of past environmental contamination and to protect human health and the environment by reducing the risk of exposure to contaminants.

10. **Restrictions On Use:** The following covenants, conditions, and restrictions apply to the use of the Property, run with the land and are binding on the Grantor:

- a) **Prohibition on Residential and Public Use.** No residential use, including, but not limited to, any single family or multi-family residential dwelling, whether permanent or temporary, and no playgrounds, parks, schools, daycare centers (whether independent or ancillary to a permitted use), recreational facilities of any type, community centers, hospitals, or adult care centers shall be permitted or allowed on the Property.
- b) **Prohibition on Agricultural Use.** No agricultural use of the Property shall be permitted or allowed, including, but not limited to, the grazing, feeding or keeping of any animal for agricultural or commercial purposes.
- c) **Restriction on New Construction or Surface Disturbance.** No new construction or surface disturbance of any kind shall be made on the Property, except as provided in the Remedial Actions or as otherwise authorized by EPA.
- d) **Protection of the Integrity of Remedial Actions.** Use of the Property shall not in any way interfere with the operation and/or maintenance of the Remedial Actions,

including, but not limited to, any equipment or infrastructure constructed or used for the Remedial Actions, or any cap or other covering to prevent contact with contaminated materials in the ground or at the surface.

11. **Modification of Restrictions:** The above restrictions may be modified, or terminated in whole or in part, in writing, by the Grantee and EPA. Any modification must be executed by Grantee and EPA and duly recorded in the real property records of Juab County.

12. **Environmental Protection Easement:** Grantor hereby grants to the Grantee and EPA an irrevocable, permanent and continuing right of access at all reasonable times to the Property for purposes of:

- a) Facilitating implementation by EPA and its designees of the Remedial Actions in the ROD, including but not limited to construction, erection, operation, maintenance and monitoring of Response Action Structures.
- b) Verifying any data or information submitted to EPA;
- c) Verifying that no action is being taken on the Property in violation of the terms of this instrument or of any federal or state environmental laws or regulations;
- d) Monitoring response actions on the Site and conducting investigations relating to contamination on or near the Site, including, without limitation, sampling of air, water, sediments, soils, and specifically, without limitation, obtaining split or duplicate samples;
- e) Conducting periodic reviews of the remedial action, including but not limited to, reviews required by applicable statutes and/or regulations; and
- f) Implementing additional or new response actions if the Grantee or EPA, in their sole discretion, determines i) that such actions are necessary to protect the environment because either the original remedial action has proven to be ineffective or because new technology has been developed which will accomplish the purposes of the remedial action in a significantly more efficient or cost effective manner; and, ii) that the additional or new response actions will not impose any significantly greater burden on the Property or unduly interfere with the then existing uses of the Property.

13. **Reserved rights of Grantor:** Grantor hereby reserves unto itself, its successors, and assigns, all rights and privileges in and to the use of the Property which are not incompatible with the restrictions, rights and easements granted herein.

14. **Access:** Nothing in this document shall limit or otherwise affect EPA's rights of entry

and access or EPA's authority to take response actions under CERCLA, the NCP, or other federal law.

15. **No Public Access and Use:** No right of access or use by the general public to any portion of the Property is conveyed by this instrument.

16. **Notice Requirement:** Grantor agrees to include in any instrument conveying any interest in any portion of the Property, including but not limited to deeds, leases and mortgages, a notice which is in substantially the following form:

NOTICE: THE INTEREST CONVEYED HEREBY IS SUBJECT TO AN ENVIRONMENTAL PROTECTION EASEMENT AND DECLARATION OF RESTRICTIVE COVENANTS, DATED _____, 200_, RECORDED IN THE PUBLIC LAND RECORDS OF JUAB COUNTY ON _____, 200_, IN BOOK _____, PAGE _____, IN FAVOR OF, AND ENFORCEABLE BY, THE UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY.

a. Within thirty (30) days of the date any such instrument of conveyance is executed, Grantor must provide Grantee with a certified true copy of said instrument and, if it has been recorded in the public land records, its recording reference.

17. **Administrative Jurisdiction:** The federal agency having administrative jurisdiction over the interests acquired by the United States by this instrument is the EPA.

18. **Enforcement:** The Grantee and EPA shall be entitled to enforce the terms of this instrument by resort to specific performance or legal process. All remedies available hereunder shall be in addition to any and all other remedies at law or in equity, including CERCLA. Enforcement of the terms of this instrument shall be at the discretion of the Grantee and EPA, and any forbearance, delay or omission to exercise its rights under this instrument in the event of a breach of any term of this instrument shall not be deemed to be a waiver by the Grantee or EPA of such term or of any subsequent breach of the same or any other term, or of any of the rights of the Grantee or EPA under this instrument.

19. **Damages:** Grantee shall be entitled to recover damages for violations of the terms of this instrument, or for any injury to the remedial action, to the public or to the environment protected by this instrument.

20. **Waiver of Certain Defenses:** Grantor hereby waives any defense of laches, estoppel, or prescription.

21. **Covenants:** Grantor hereby covenants that the Grantor is lawfully seized in fee simple of the Property, that the Grantor has a good and lawful right and power to sell and convey it or any interest therein, that the Property is free and clear of encumbrances, except those noted on Exhibit B attached hereto, and that the Grantor will forever warrant and defend the title thereto and the quiet possession thereof.

22. **Notices:** Any notice, demand, request, consent, approval, or communication that either party desires or is required to give to the other shall be in writing and shall either be served personally or sent by first class mail, postage prepaid, addressed as follows:

To Grantor:

To Grantee:

A copy of all such notices shall also be sent to:

Remedial Project Manager
Eureka Mills NPL Site
U.S. Environmental Protection Agency
999 18th Street, Suite 300
Denver, CO 80202

23. **General Provisions:**

a) **Controlling law:** The interpretation and performance of this instrument shall be governed by the laws of the United States or, if there are no applicable federal laws, by the law of the State of Utah.

b) **Liberal construction:** Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the grant to effect the purpose of this instrument and the policy and purpose of CERCLA. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.

c) **Severability:** If any provision of this instrument, or the application of it to any person or circumstance, is found to be invalid, the remainder of the provisions of this instrument,

or the application of such provisions to persons or circumstances other than those to which it is found to be invalid, as the case may be, shall not be affected thereby.

d) Entire Agreement: This instrument sets forth the entire agreement of the Parties with respect to rights and restrictions created hereby, and supersedes all prior discussions, negotiations, understandings, or agreements relating thereto, all of which are merged herein.

e) No Forfeiture: Nothing contained herein will result in a forfeiture or reversion of Grantor's title in any respect.

f) Joint Obligation: If there are two or more Parties identified as Grantor herein, the obligations imposed by this instrument upon them shall be joint and several.

g) Successors: The covenants, terms, conditions, and restrictions of this instrument shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns and shall continue as a servitude running in perpetuity with the Property. The term "Grantor", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantor" and their personal representatives, heirs, successors, and assigns. The term "Grantee", wherever used herein, and any pronouns used in place thereof, shall include the persons and/or entities named at the beginning of this document, identified as "Grantee" and their personal representatives, heirs, successors, and assigns. The rights of the Grantee and Grantor under this instrument are freely assignable, subject to the notice provisions hereof.

h) Termination of Rights and Obligations: A party's rights and obligations under this instrument terminate upon transfer of the party's interest in the Easement or Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

i) Captions: The captions in this instrument have been inserted solely for convenience of reference and are not a part of this instrument and shall have no effect upon construction or interpretation.

j) Counterparts: The Parties may execute this instrument in two or more counterparts, which shall, in the aggregate, be signed by both Parties; each counterpart shall be deemed an original instrument as against any party who has signed it. In the event of any disparity between the counterparts produced, the recorded counterpart shall be controlling.

TO HAVE AND TO HOLD unto the Utah Department of Environmental Quality and its assigns forever.

IN WITNESS WHEREOF, Grantor has caused this Agreement to be signed in its name.

Executed this _____ day of _____, 200_.

By: _____

Its: _____

STATE OF _____)

) SS

COUNTY OF _____)

On this __ day of ____, 200__, before me, the undersigned, a Notary Public in and for the State of ____, duly commissioned and sworn, personally appeared _____, known to be the _____ of _____, the corporation that executed the foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute said instrument.

Witness my hand and official seal hereto affixed the day and year written above.

Notary Public in and for the
State of

My Commission Expires: _____.

This easement is accepted this _____ day of _____, 200__.

STATE OF UTAH

UTAH DEPARTMENT OF
ENVIRONMENTAL QUALITY

By: _____

Attachments:

- Exhibit A - Legal description of the Property
- Exhibit B - List of permitted title encumbrances